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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 MARIO LAFAYETTE BAIN,) Case No. CV 16-0356-JPR
12)
13) Petitioner,)
14) v.) MEMORANDUM DECISION AND ORDER
15) DENYING PETITION FOR WRIT OF
16) HABEAS CORPUS
17)
18) WARDEN ARNOLD,)
19) Respondent.)
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21)
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17 **PROCEEDINGS**

18 On January 15, 2016, Petitioner filed a Petition for Writ of
19 Habeas Corpus by a Person in State Custody. He also consented to
20 having a U.S. Magistrate Judge conduct all further proceedings in
21 his case, including entering final judgment. On March 3, 2016,
22 Respondent filed an Answer and consented to proceed before a
23 Magistrate Judge. Petitioner did not file a reply.

24 For the reasons discussed below, the Court denies the
25 Petition and dismisses this action with prejudice.

26 **BACKGROUND**

27 On January 27, 2014, a Los Angeles County Superior Court
28 jury found Petitioner guilty of possession of cocaine base for

1 sale. (Lodged Doc. 1, Clerk's Tr. at 133.) The jury acquitted
 2 Petitioner of the charge of sale, transportation, or offer to
 3 sell a controlled substance. (Id. at 132.) Petitioner admitted
 4 that he had suffered two "strike" convictions under California's
 5 Three Strikes law, had served four prison terms, and had suffered
 6 five felony convictions. (Id. at 31-32, 136, 163.) On March 25,
 7 2014, the trial court struck one of Petitioner's "strike"
 8 convictions and sentenced him to 10 years in state prison. (Id.
 9 at 162-64, 166.)

10 Petitioner appealed, raising only the sole claim in the
 11 Petition. (Lodged Doc. 3.) On May 4, 2015, the California Court
 12 of Appeal affirmed the judgment. (Lodged Doc. 6.) Petitioner
 13 filed a petition for review in the California Supreme Court,
 14 which summarily denied review on July 15, 2015. (Lodged Docs. 7,
 15 8.)

16 PETITIONER'S CLAIM

17 The trial court abused its discretion and violated
 18 Petitioner's 14th Amendment right to due process when it denied
 19 his pretrial Pitchess motion.¹ (Pet. Mem. at 4-16.)

20 SUMMARY OF PERTINENT FACTS

21 The factual summary in a state appellate-court opinion is
 22 entitled to a presumption of correctness under 28 U.S.C.
 23 § 2254(e)(1). See Crittenden v. Chappell, 804 F.3d 998, 1010-11
 24 (9th Cir. 2015). But see Murray v. Schriro, 745 F.3d 984, 1001

25
 26 ¹ Pitchess v. Super. Ct., 11 Cal. 3d 531 (1974) (allowing
 27 discovery of internal police files in certain circumstances),
 28 superseded by statute, Cal. Penal Code §§ 832.7, 832.8, Cal.
 Evid. Code §§ 1043-45, as recognized in People v. Mooc, 26 Cal.
 4th 1216, 1219-20 (2001).

1 (9th Cir. 2014) (discussing "state of confusion" in circuit's law
2 concerning interplay of § 2254(d)(2) and (e)(1)). The Court
3 adopts the following statement of facts from the California Court
4 of Appeal's opinion as a fair and accurate summary of the
5 pertinent proceedings at trial. The Court has nonetheless
6 independently reviewed the state-court record.

7 Prior to trial, [Petitioner] brought a Pitchess
8 motion seeking information in the personnel records of
9 three police officers, [Alonzo] Williams, [Benjamin]
10 McCauley, and [Jose] Calderon, relating to any alleged
11 conduct amounting to excessive force or dishonesty.
12 Attached to the motion was a copy of the arrest report,
13 signed by Officer Williams and Detective [Vip]
14 Kanchanamongkol, in which Officer Williams reported that
15 on August 27, 2013, at about 8:15 p.m., he was working
16 undercover in plain clothes with the Department's
17 Narcotics Task Force, near the intersection of Sixth
18 Street and San Julian Street in Los Angeles. The team
19 consisted of approximately 15 officers.

20 As Officer Williams walked west on the south
21 sidewalk of Sixth Street he encountered [Petitioner], who
22 walked toward him and said, "Cavi cavi," which is street
23 vernacular for rock cocaine. Officer Williams replied,
24 "I need a dub," which is street vernacular for \$20 worth
25 of narcotics. [Petitioner] replied, "Yeah, I have to go
26 to my ass for that amount," as he reached into his rear
27 waistband area and sat down in a nearby wheelchair.
28 [Petitioner] produced a clear plastic bag containing

1 numerous smaller bindles of off-white solids resembling
2 rock cocaine. He then extracted one of the bindles and
3 gave it to Officer Williams after the officer handed him
4 a prerecorded \$20 bill. Shortly after Officer Williams
5 gave the predetermined "buy" signal to other officers who
6 had observed the transaction, [Petitioner] was detained
7 by Officers Lozano and [Huy] Nguyen and then arrested.
8 From the seat of the wheelchair Officer McCauley
9 recovered 111 plastic bindles containing off-white solids
10 resembling rock cocaine. Officer Nguyen found currency
11 totaling \$176 on [Petitioner]'s person. The \$176
12 included two \$20 bills, three \$10 bills, seven \$5 bills
13 and 69 one dollar bills, but the prerecorded \$20 bill was
14 not found, despite a search of the area by the responding
15 officers. Detectives [Thomas] Mossman, Kanchanamongkol,
16 and [Mariano] Garde monitored Officer Williams's
17 transmission throughout his interaction with [Petitioner]
18 via a one-way transmitter.²

19 Defense counsel supported the motion with her
20 declaration, which included the following paragraph:
21 "[Petitioner] was walking on the corner of Wall St. and
22 6th, in the city and county of Los Angeles. [Petitioner]
23 denies saying the words 'Cavi, Cavi' to anyone.
24 [Petitioner] never heard anyone, including an undercover
25

26 ² According to the arrest report, Officer Calderon
27 observed the narcotics transaction between Petitioner and Officer
28 Williams and directed "chase units" to detain Petitioner after
the transaction was complete. (Lodged Doc. 1, Clerk's Tr. at
66.)

1 officer, say to him 'I need a dub.' [Petitioner] denies
2 ever having a conversation with anyone, which consisted
3 of him saying 'yeah, I have to go to my ass for that
4 amount.' [Petitioner] was walking down the street,
5 minding his own business, when the police stopped and
6 searched him. The police did not find any illegal drugs
7 on him during the search. [Petitioner] denies ever
8 sitting in a wheelchair. [Petitioner] denies ever owning
9 or possessing a wheelchair, or having sat in one on the
10 day of his arrest. [Petitioner] did not reach into his
11 waist band area with his right hand, and did not remove
12 a large clear plastic bag containing numerous off white
13 solids resembling rock cocaine. [Petitioner] adamantly
14 denies ever giving anyone one [sic] a small clear plastic
15 bindle containing an off white solid resembling rock
16 cocaine in exchange for \$20.00. [Petitioner] did not
17 take or accept a twenty dollar bill from anyone.
18 [Petitioner] did not sit in a wheelchair at any time.
19 [Petitioner] was walking on the street when officers
20 rushed him, searched him, failed to find illegal
21 substances on his person, but arrested him anyway."

22 Counsel also stated on information and belief that
23 Officers Williams, McCauley, and Calderon all lied about
24 the events, that that [sic] this would be the defense
25 raised at trial.

26 The trial court denied the Pitchess motion. The
27 court acknowledged the low threshold for showing good
28 cause, but found that [Petitioner]'s showing was merely

1 a denial.
2 (Lodged Doc. 6 at 3-4.)

3 **STANDARD OF REVIEW**

4 Under 28 U.S.C. § 2254(d), as amended by the Antiterrorism and
5 Effective Death Penalty Act of 1996:

6 An application for a writ of habeas corpus on behalf of
7 a person in custody pursuant to the judgment of a State
8 court shall not be granted with respect to any claim that
9 was adjudicated on the merits in State court proceedings
10 unless the adjudication of the claim – (1) resulted in a
11 decision that was contrary to, or involved an
12 unreasonable application of, clearly established Federal
13 law, as determined by the Supreme Court of the United
14 States; or (2) resulted in a decision that was based on
15 an unreasonable determination of the facts in light of
16 the evidence presented in the State court proceeding.

17 Under AEDPA, the “clearly established Federal law” that
18 controls federal habeas review consists of holdings of Supreme
19 Court cases “as of the time of the relevant state-court
20 decision.” Williams v. Taylor, 529 U.S. 362, 412 (2000). As the
21 Supreme Court has “repeatedly emphasized, . . . circuit precedent
22 does not constitute ‘clearly established Federal law, as
23 determined by the Supreme Court.’” Glebe v. Frost, 135 S. Ct.
24 429, 431 (2014) (per curiam) (quoting § 2254(d)(1)). Further,
25 circuit precedent “cannot ‘refine or sharpen a general principle
26 of Supreme Court jurisprudence into a specific legal rule that
27 [the] Court has not announced.’” Lopez v. Smith, 135 S. Ct. 1, 4
28 (2014) (per curiam) (quoting Marshall v. Rodgers, 133 S. Ct.

1 1446, 1450 (2013) (per curiam)).

2 Although a particular state-court decision may be both
3 "contrary to" and "an unreasonable application of" controlling
4 Supreme Court law, the two phrases have distinct meanings.
5 Williams, 529 U.S. at 391, 412-13. A state-court decision is
6 "contrary to" clearly established federal law if it either
7 applies a rule that contradicts governing Supreme Court law or
8 reaches a result that differs from the result the Supreme Court
9 reached on "materially indistinguishable" facts. Early v.
10 Packer, 537 U.S. 3, 8 (2002) (per curiam) (citation omitted). A
11 state court need not cite or even be aware of the controlling
12 Supreme Court cases, "so long as neither the reasoning nor the
13 result of the state-court decision contradicts them." Id.

14 State-court decisions that are not "contrary to" Supreme
15 Court law may be set aside on federal habeas review only "if they
16 are not merely erroneous, but 'an unreasonable application' of
17 clearly established federal law, or based on 'an unreasonable
18 determination of the facts' (emphasis added)." Id. at 11
19 (quoting § 2254(d)). A state-court decision that correctly
20 identifies the governing legal rule may be rejected if it
21 unreasonably applies the rule to the facts of a particular case.
22 Williams, 529 U.S. at 407-08. To obtain federal habeas relief
23 for such an "unreasonable application," however, a petitioner
24 must show that the state court's application of Supreme Court law
25 was "objectively unreasonable." Id. at 409-10. In other words,
26 habeas relief is warranted only if the state court's ruling was
27 "so lacking in justification that there was an error well
28 understood and comprehended in existing law beyond any

1 possibility for fairminded disagreement." Harrington v. Richter,
2 562 U.S. 86, 103 (2011).

3 Petitioner raised his claim on direct appeal (Lodged Doc.
4 3), resting it on federal law as well as state law (see infra
5 note 3), and the court of appeal rejected it in a reasoned
6 decision; it did not, however, specifically address the federal
7 aspect of the claim (see Lodged Doc. 6). The California Supreme
8 Court summarily denied review. (Lodged Docs. 7, 8.) The Court
9 "looks through" a state supreme court's silent denial to the
10 court of appeal's reasoned decision as the basis for the state
11 courts' judgment. See Ylst v. Nunnemaker, 501 U.S. 797, 803-04
12 (1991). Because the state courts adjudicated the federal claim
13 on the merits, see Johnson v. Williams, 133 S. Ct. 1088, 1095-96
14 (2013) (Richter presumption applies to federal claim unaddressed
15 in state court's reasoned decision), the Court's review is
16 limited by AEDPA deference. See Richter, 562 U.S. at 100-01.

17 But because the state court did not expressly address the
18 federal aspect of the claim, the Court conducts an independent
19 review of the record to determine whether the state court was
20 objectively unreasonable in applying controlling federal law.
21 See Haney v. Adams, 641 F.3d 1168, 1171 (9th Cir. 2011)
22 (independent review "is not de novo review of the constitutional
23 issue, but only a means to determine whether the 'state court
24 decision is objectively unreasonable'" (citation omitted)); see
25 also Richter, 562 U.S. at 98, 102 (holding that petitioner still
26 has burden of "showing there was no reasonable basis for the
27 state court to deny relief," and reviewing court "must determine
28 what arguments or theories supported or . . . could have

1 supported[] the state court's decision" and "whether it is
2 possible fairminded jurists could disagree that those arguments
3 or theories are inconsistent with" Supreme Court precedent).

4 DISCUSSION

5 I. Applicable Law

6 Although a Pitchess motion is a creature of state law, it
7 implicates the due process right to receive exculpatory and
8 impeachment evidence. See Harrison v. Lockyer, 316 F.3d 1063,
9 1065-66 (9th Cir. 2003). But a Pitchess claim is cognizable on
10 federal habeas review only if it "resolves to a claim that the
11 trial court's asserted error in connection with Petitioner's
12 Pitchess motion violated Petitioner's rights under the Brady
13 doctrine." Lopez-Martinez v. Dovey, No. CV 06-1987-CJC (MAN),
14 2009 WL 863576, at *15 (C.D. Cal. Mar. 26, 2009). If a Brady
15 violation is not established, then a petitioner "has no federally
16 cognizable claim, regardless of whether the state court's
17 handling of his Pitchess motion was erroneous under state law."
18 Id.

19 Due process requires that a prosecutor disclose material
20 evidence favorable to the defense. Brady v. Maryland, 373 U.S.
21 83, 87 (1963); Strickler v. Greene, 527 U.S. 263, 280 (1999)
22 (noting that evidence is "material" if "there is a reasonable
23 probability that, had the evidence been disclosed to the defense,
24 the result of the proceeding would have been different"). Three
25 elements must be proved to establish a Brady violation: (1) the
26 evidence at issue was favorable to the defendant, either as
27 exculpatory evidence or impeachment material; (2) the evidence
28 was suppressed by the state, willfully or inadvertently; and (3)

1 prejudice resulted from the failure to disclose the evidence.
2 Strickler, 527 U.S. at 281-82; see also United States v. Bagley,
3 473 U.S. 667, 675-78 (1985). Brady did not, however, create a
4 general constitutional right to discovery. Weatherford v.
5 Bursey, 429 U.S. 545, 559 (1977). "[T]he Due Process Clause has
6 little to say regarding the amount of discovery which the parties
7 must be afforded." Id. (citation omitted).

8 II. Court of Appeal's Decision

9 On direct appeal, the court of appeal analyzed solely the
10 state-law aspect of Petitioner's claim. (Lodged Doc. 6 at 4-10.)
11 It explained that under Pitchess, "on a showing of good cause, a
12 criminal defendant is entitled to discovery of relevant documents
13 or information in the confidential personnel records of a peace
14 officer accused of misconduct against the defendant." (Id. at 4
15 (citations and alteration omitted).) "If the defendant
16 establishes good cause, the court must review the requested
17 records in camera to determine what information, if any, should
18 be disclosed." (Id. at 5 (citations omitted).)

19 The court of appeal analyzed counsel's showing and "agree[d]
20 with the trial court that counsel's declaration amounted to no
21 more than a denial of the facts stated in the police report."
22 (Id. at 6.) Petitioner had not provided an alternative version
23 of the events, and although he contended that the failure to find
24 the "buy money" supported a possible defense based upon
25 fabrication by the police, counsel's declaration "failed to
26 present any factual scenario that might help to explain the scope
27 of the alleged fabrication." (Id. at 9.) Thus, Petitioner did
28 not show good cause, and the trial court did not abuse its

1 discretion by refusing to examine or order the disclosure of the
2 officers' personnel records. (Id. at 10.)

3 III. Analysis

4 To the extent Petitioner contends the trial court abused its
5 discretion and misapplied state law when it denied his Pitchess
6 motion (Pet. Mem. at 14), his claim is not cognizable on federal
7 habeas review. See § 2254(a); Estelle v. McGuire, 502 U.S. 62,
8 67-68 (1991) (habeas relief will not lie to correct errors in
9 interpretation or application of state law); see also Williams v.
10 Borg, 139 F.3d 737, 740 (9th Cir. 1998) (federal habeas relief
11 available "only for constitutional violation, not for abuse of
12 discretion"). Petitioner's sole cognizable federal claim is his
13 Brady claim.³ (Pet. Mem. at 5.)

15 ³ Respondent contends that Petitioner's Brady claim is
16 unexhausted. (Answer at 6-8.) But although Petitioner did not
17 cite Brady in the state court, he argued in his court-of-appeal
18 opening brief and in his petition for review that the trial
19 court's denial of his Pitchess motion violated his 14th Amendment
20 right to due process because Pitchess was "based on the premise
21 that evidence contained in a law enforcement officer's personnel
22 file may be relevant to an accused's criminal defense and that to
23 withhold such relevant evidence from the defendant would violate
24 the accused's due process right to a fair trial." (Lodged Doc. 3
25 at 16; Lodged Doc. 7 at 13-14.) Petitioner supported his
26 argument with a citation to People v. Mooc, 26 Cal. 4th 1216,
1225 (2001) (Lodged Doc. 3 at 16; Lodged Doc. 7 at 14), in which
the California Supreme Court declared that the Pitchess procedure
"must be viewed against the larger background of the
prosecution's constitutional obligation to disclose to a
defendant material exculpatory evidence so as not to infringe the
defendant's right to a fair trial," and cited Brady and Bagley.
Petitioner, therefore, fairly presented his Brady claim to the
state courts, and the claim is exhausted.

27 In any event, the Court may deny an unexhausted claim on the
28 merits if it finds, on de novo review, that it is not even
(continued...)

1 The state court's denial of Petitioner's Brady claim was not
2 objectively unreasonable. Petitioner has not shown that the
3 personnel records of Officers Williams, McCauley, and Calderon
4 contained any information material to his defense. (See Lodged
5 Doc. 1, Clerk's Tr. at 49-75; Lodged Doc. 2, Rep.'s Tr. at A2-
6 A3.) Because Petitioner did not make a sufficient preliminary
7 showing of materiality under state law -- a finding this Court is
8 bound by, see Bradshaw v. Richey, 546 U.S. 74, 76 (2005) (per
9 curiam) -- the trial court never proceeded to the second step of
10 the Pitchess procedure, an in camera review of the records.
11 Consequently, the record does not contain any information about
12 whether the officers' personnel files included exculpatory or
13 impeaching information.

14 Petitioner cannot base his Brady claim on mere speculation
15 that the files contained information giving rise to a reasonable
16 probability of a different result at trial had it been disclosed.
17 (See Pet. Mem. at 6, 15-16); Runninqeagle v. Ryan, 686 F.3d 758,
18 769 (9th Cir. 2012) ("to state a Brady claim, [petitioner] is
19 required to do more than 'merely speculate' about" nature of
20 undisclosed evidence (citation omitted)); United States v.
21 Lopez-Alvarez, 970 F.2d 583, 598 (9th Cir. 1992) (rejecting Brady
22 claim when defendant's assertion that allegedly withheld evidence
23 existed was "purely speculative"). Absence of evidence that the
24
25

26 ³ (...continued)
27 colorable, as is the case here. See § 2254(b)(2); Cassett v.
28 Stewart, 406 F.3d 614, 623-24 (9th Cir. 2005).

1 files contained Brady material is fatal to Petitioner's claim.⁴
2 See Pennsylvania v. Ritchie, 480 U.S. 39, 58 n.15 (1987)
3 (criminal defendant "may not require the trial court to search
4 through" sensitive file "without first establishing a basis for
5 his claim that it contains material evidence"); Harrison, 316
6 F.3d at 1066 (affirming denial of Brady claim when petitioner
7 "made no showing that [officer]'s file contained complaints
8 material to his defense"; noting that Pitchess "good cause"
9 procedure complies with Brady as modified by Ritchie).

10 Accordingly, the court of appeal was not objectively
11 unreasonable in denying Petitioner's claim. Alternatively, his
12 Brady claim fails on de novo review.

13 CONCLUSION

14 IT IS ORDERED that the Petition is denied and Judgment be
15 entered dismissing this action with prejudice.

16
17 DATED: August 30, 2016


18 JEAN ROSENBLUTH
19 U.S. MAGISTRATE JUDGE

20
21 ⁴ The California Supreme Court recently held that a
22 defendant is not required to show what information was in the
23 files to demonstrate good cause for in camera review under
24 Pitchess. See People v. Super. Ct. (Johnson), 61 Cal. 4th 696,
25 721 (2015) ("The required threshold showing [under Pitchess] does
26 not place a defendant 'in the Catch-22 position of having to
27 allege with particularity the very information he is seeking.'" (citation omitted)). Petitioner cannot, however, establish a
28 Brady violation without showing the existence of undisclosed information that would have given rise to a reasonable probability of a different result at trial. See Strickler, 527 U.S. at 281-82; see also Johnson, 61 Cal. 4th at 711-12 (noting that "Brady's constitutional materiality standard is narrower than the Pitchess requirement").